

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Alliance Companies)

Ameren Corporation)
 On behalf of:)
 Union Electric Company)
 Central Illinois Public Service Company)

American Electric Power Service Corporation)
 On behalf of :)
 Appalachian Power Company)
 Columbus Southern Power Company)
 Indiana Michigan Power Company)
 Kentucky Power Company)
 Kingsport Power Company)
 Ohio Power Company)
 Wheeling Power Company)

Consumers Energy Company)
and Michigan Electric Transmission Company)

The Dayton Power and Light Company)

The Detroit Edison Company)
and International Transmission Company)

Exelon Corporation)
 On behalf of:)
 Commonwealth Edison Company)
 Commonwealth Edison Company)
 of Indiana, Inc.)

**Docket Nos. RT01-88-000,
et al., ER99-3144-000, *et al.*
and EC99-80-000, *et al.*
(Not Consolidated)**

First Energy Corporation)
 On behalf of:)
 American Transmission Systems, Inc.)
 The Cleveland Electric Illuminating)
 Company)
 Ohio Edison Company)
 Pennsylvania Power Company)
 The Toledo Edison Company)

Illinois Power Company)

Northern Indiana Public Service Company)

Virginia Electric and Power Company

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)
)

**MOTION FOR CLARIFICATION AND
REQUEST FOR EXPEDITED ACTION,
OR IN THE ALTERNATIVE,
REQUEST FOR REHEARING OF THE
VIRGINIA STATE CORPORATION COMMISSION, ILLINOIS COMMERCE
COMMISSION, INDIANA UTILITY REGULATORY COMMISSION,
MICHIGAN PUBLIC SERVICE COMMISSION, AND
WEST VIRGINIA PUBLIC SERVICE COMMISSION.**

Pursuant to Rules 212 and 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.713, and the Federal Power Act, 16 U.S.C. § 825l, the Virginia State Corporation Commission, Illinois Commerce Commission, Indiana Utility Regulatory Commission, Michigan Public Service Commission, and West Virginia Public Service Commission (together, “Joint Movants”) seek expedited clarification of or, in the alternative, rehearing of the Commission’s July 12, 2001 “Order on RTO Filing” (“July 12 Order”). In support of their motion, the Joint Movants state the following.

I.

MOTION FOR CLARIFICATION AND REQUEST FOR EXPEDITION

In its July 12 Order, the Commission expressed substantial concern that the Alliance Companies (the transmission-owning applicants in these dockets) were making “business decisions prior to implementation of an Alliance RTO,” decisions that would potentially affect the future RTO’s ability to conduct its own operations. The Commission ordered the Alliance Companies to take immediate steps to seat an independent Board to make such decisions:

Therefore, we direct Alliance Companies to decide which of the alternative business plans proposed they intend to implement within 45 days of the date of this order. *We further direct that from the date of this order an independent board be established to make all business decisions for the RTO.* Until final RTO approval is granted, a stakeholder advisory committee should advise the independent board.

July 12 Order, *mimeo.* at 13 (footnote omitted).

Unfortunately, the above-quoted paragraph has been subject to varying interpretations, and hence the Joint Movants seek clarification of its meaning. It is clear to the Joint Movants that the Commission's directive to seat an independent Board was meant to require the Alliance Companies to commence the board selection process (presumably in conjunction with stakeholders) immediately. This is the only logical construction of the phrase "from the date of this order" in the italicized sentence set out above.

Nonetheless, it appears from conversations held with representatives of the Alliance Companies since issuance of the July 12 Order that the Applicants are interpreting the Order differently. Some of them, at least, appear to believe that so long as the Alliance Bridgeco does not make any decisions that, in their opinion, affect "market development," the Alliance Companies may delay seating a Board indefinitely.¹ In the meantime, however, those decisions that are being made by the Alliance Companies escape scrutiny.

In much the same vein, the Alliance Companies have posted a proposed stakeholder advisory process on the Alliance RTO website in purported response to the

¹ In fact, however, the Alliance Bridgeco is making decisions that definitely do affect market development, *e.g.*, the decision to require all transmission customers to submit balanced schedules (generation must equal anticipated load), thus potentially hindering the development of a substantial real-time spot market for power.

July 12 Order's directive to immediately resolve the stakeholder participation issue discussed at length by this Commission (July 12 Order, *mimeo.* at 36-38). However, the Alliance's posted process would have the stakeholders advise the *Alliance Bridgeco* until such time as an independent board is established. This is directly at odds with language in the Commission's July 12 Order requiring, unequivocally, that the stakeholder advisory committee advise the independent board—not some interim entity (July 12 Order, *mimeo.* at 13).

At the same time, the Alliance Companies are still committed (at least officially) to a December 15 start-up date for the Alliance RTO. Thus, the Alliance Bridgeco is continuing forward with decisions and arrangements associated with the start-up of the Alliance RTO, without any oversight by an independent Board, or even concrete steps to seat one. This state of affairs is both alarming and unacceptable to the Joint Movants.

Accordingly, the Joint Movants seek clarification from the Commission regarding the timeframe in which the Alliance Companies must comply with the Commission's directive to seat an independent Board. The Joint Movants further request the Commission to order the Alliance Companies to commence the Board selection process immediately, and to complete the same on or before August 15, 2001.² Stakeholders should be permitted to participate in the Board selection process, as the Commission has required in other RTO cases.³

² The Alliance Companies have known since January of this year that they would no longer be proposing to conduct an immediate initial public offering for the stock of a managing member for the Alliance Transco LLC, and hence that other measures, such as the seating of an independent Board, would be required under the applicable Commission precedent. Hence, they cannot claim surprise in this matter.

³ *Carolina Power & Light Co., et al.*, 94 FERC ¶ 61,273, p. 61,988 (2001); *GridFlorida LLC*, 94 FERC ¶ 61,020, p. 61,046 (2001). Moreover, Joint Movants assume that any stakeholder advisory committee that is developed will continue to advise the independent Board, or successor

The Alliance Bridgeco and the Alliance Companies should be ordered to cease making decisions that affect the future course of the Alliance RTO's operations, consistent with the Commission's ruling in *GridFlorida*, cited by the Commission in the July 12 Order.⁴ Moreover, the Board, once seated, should undertake a thorough review of all RTO developmental work undertaken by the Alliance Bridgeco prior to the Board's installation. Such review should be conducted in consultation with the stakeholder advisory committee.

Timely guidance on these issues is of the utmost gravity because of the important deadlines facing the Alliance Companies. By August 15, they must make a definitive compliance filing addressing the numerous holes remaining in their proposal. They are also still committed to a December 15 start-up date for the Alliance RTO that, if adhered to, will necessitate the making of myriad important policy decisions for the RTO in the coming weeks and months. The absence of an independent Board to make these decisions and to approve the Alliance Companies' proposed compliance filing will only ensure continued controversy and litigation before this Commission.

governing body of the Alliance RTO, even after the RTO commences operations. This is clearly called for under the Alliance Companies' own RTO proposal. *See* the Alliance Companies May 15, 2001 Supplemental Compliance Filing in Docket Nos. ER99-3144-004 and EC99-80-004, Attachment D (Section 6.6 of the Pro Forma Alliance Transco LLC Agreement)(Advisory Committee proposed to provide input and advice to the Managing Member).

⁴ Mimeo at 13, n. 30. In *GridFlorida*, while determining that leasing office space, setting up employee benefit plans and other infrastructure tasks did not pose independence concerns, the Commission noted concerns about the independence of actions which "involve steps necessary for implementing market design . . . The Commission regards the acquisition of software and other systems implementing market design as significant to the future operation of the RTO and will require that any acquisition of software or other systems implementing market design not be undertaken until the independent Board has been seated and given its approval." *GridFlorida LLC, et al.*, 94 FERC ¶ 61,363 at 62,325 (2001).

Finally, the Joint Movants are compelled, due to the Alliance Companies' inattention to or disregard of the Commission's orders in this proceeding—particularly the July 12 Order—to register their grave concerns about the target RTO operational date of December 15, 2001, established in Order 2000. The Commission must exercise extreme care to ensure that this deadline is not used as a sword in the short term to avoid completing tasks vital to the long-term fairness and effectiveness of the Alliance RTO—particularly those tasks addressed in this motion. Moreover, the Commission should not permit the Alliance Companies to use this impending target date to shield vital decision-making from scrutiny, under the guise of rushing to meet the December 15, 2001 deadline. This is particularly so because the Alliance Companies themselves are responsible for delays in achieving such major milestones as picking a business model/governance structure, seating an independent board, and collaboratively establishing a stakeholder process satisfactory to all. The Joint Movants therefore request expedited Commission action on their motion, as well as a shortened response period by the Alliance Companies. Joint Movants are serving this pleading upon counsel for the Alliance Companies by hand and electronic mail, and request that they be required to respond within 5 business days.

II.

ALTERNATIVE REQUEST FOR REHEARING

In the event that the Commission denies the Joint Movants' request for relief in Section I above, the Joint Movants seek rehearing of the Commission's ruling in the July 12 Order on the seating of an independent Board, as so clarified. The timely seating of an independent Board is essential to ensure that important formative decisions that may affect the Alliance RTO for years to come are not made by the Applicants, who as transmission owners and generators are interested market participants.

III.

CONCLUSION

Wherefore, the Joint Movants respectfully request the Commission to: (1) order the Alliance Companies to commence the Board selection process immediately and to complete it by August 15, 2001; (2) permit stakeholders to participate fully in the Board selection process in accordance with relevant Commission precedent; (3) reiterate that any stakeholder advisory group developed pursuant to the directive in the July 12 Order should advise the independent Board, and not the Alliance Bridgeco; and (4)

order the Alliance Bridgeco and the Alliance Companies to cease making decisions that may affect the future course of the Alliance RTO's operations until an independent Board is seated.

Respectfully submitted,

**STATE OF MICHIGAN,
MICHIGAN PUBLIC SERVICE
COMMISSION**

By their counsel:

Jennifer M. Granholm
Attorney General of the State of Michigan

David A. Voges (P25143)
Henry J. Boynton (P25242)
Patricia S. Barone (P29560)
Assistant Attorney General
Michigan Public Service Commission
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911-5984
Telephone: (517) 334-7650

Harvey L. Reiter
David D'Alessandro
John E. McCaffrey
Morrison & Hecker L.L.P.
1150 18th Street, NW, Suite 800
Washington, DC 20036
Telephone: (202) 785-9100

ILLINOIS COMMERCE COMMISSION

Sarah A. Naumer
Thomas G. Aridas
160 N. LaSalle Street, Suite C-800
Chicago, Illinois 60601
Telephone: (312) 793-2877

Randy Rismiller
Federal Energy Programs
527 East Capitol Avenue
Springfield, Illinois 62701
Telephone: (217) 785-4046

**INDIANA UTILITY REGULATORY
COMMISSION**

Kris Kern Wheeler
Indiana Government Center South
302 West Washington Street, Suite E306
Indianapolis, IN 46204
Telephone: (317) 232-6735

**VIRGINIA STATE CORPORATION
COMMISSION**

William H. Chambliss
Arlen K. Bolstad
Virginia State Corporation Commission
Post Office Box 1197
Richmond, VA 23218

Susan N. Kelly
Phyllis G. Kimmel
Brian M. Meloy
Miller, Balis & Oneil, P.C.
1140 Nineteenth Street, NW, Suite 700
Washington, DC 20036
Telephone: (202) 296-2960

Date: August 8, 2001

**WEST VIRGINIA PUBLIC SERVICE
COMMISSION**

Richard E Hitt
General Counsel
PO Box 812
Charleston , WV 25323-0812

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of August, 2001, served the foregoing document upon all parties shown on the Commission's official service lists in Docket Nos. RT01-88-000, *et al.*, ER99-3144-000, *et al.* and EC99-80-000, *et al.*, by depositing copies in the United States mail, first class postage prepaid.

By _____
Brian M. Meloy
Miller, Balis & O'Neil, P.C.
1140 19th Street, N.W., Suite 700
Washington, D.C. 20036-6602
202-296-2960